

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of W N JOHNSON, Minor.

UNPUBLISHED
November 14, 2013

No. 316211
Wayne Circuit Court
Family Division
LC No. 10-496636

Before: OWENS, P.J., and JANSEN and HOEKSTRA, JJ.

PER CURIAM.

In this child protection proceeding, the minor child appeals as of right the trial court's order of disposition making the minor child a temporary court ward in lieu of terminating the parental rights of respondent, and allowing respondent to plan for reunification. Because we conclude that the trial court clearly erred by finding that termination is not in the best interests of the child, we reverse and remand for entry of an order terminating respondent's parental rights to the child.

Respondent's plea of admission established a basis for jurisdiction under MCL 712A.2(b) and for termination of her parental rights under MCL 712A.19b(3). Respondent's admission that she failed to comply with a parent-agency agreement for reunification with another child, and that her parental rights to J.J. were terminated in May 2012, together with the court records from that proceeding, clearly established a statutory basis for termination under § 19b(3)(l). The only issue on appeal is whether the trial court erred by declining to terminate respondent's parental rights to the child based on the child's best interests.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). Whether termination is in the child's best interests is to be determined by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013). The trial court's decision regarding the child's best interests is reviewed for clear error. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(K). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

In this case, respondent's dispositional hearing regarding the best interests of the child was held before a referee, who ultimately concluded that termination was not in the child's best interests. The referee issued his ruling on the record, stating:

Admittedly by reviewing the clinic,¹ it paints a bleak outlook for mother ever to come into compliance, and mother, based on the testimony, didn't file the birth certificate. However, . . . I have to come up with what is best for this child, [W.J.]. And I have Mr. Johnson, who has now established paternity, who . . . wasn't a subject of the permanent custody, which is asking temporary custody. So it's unquestioned that . . . we found jurisdiction for the child. We did that several weeks ago Now I have to . . . figure out is it in the best interest of this child to terminate this mother's rights.

It's clear from the clinic, at this point in her life, mother does not have a lot of insight into her behavior. I recognize that she is a younger mother, and that there is a bond between her and this child, [W.J.]. I don't know what the extent of the current relationship between [respondent and Kevin Jones] presently is. However, I do find and feel that at this point in time it is in the best interest to allow mother a chance to demonstrate that she can plan.

* * *

[B]ased on the fact that this child was in the mother's care previously, I'm stating that there is a bond. . . . Has this mother been perfect? Oh, by no means, not even close to perfect; and came very close to having her rights terminated today

Although the clinic would say – okay, neither really deserve a chance, specifically, the mother. I'm going to give them a chance to demonstrate to this Court that they can be in compliance. . . . So at this point . . . in time, we'll give this mother a chance. And it is in the best interest.

Both petitioner and the lawyer-guardian ad litem asked the trial court to review the referee's decision. The trial court approved the referee's recommendation.

On the basis of the record evidence in this case, we conclude that the trial court clearly erred by finding that termination of respondent's parental rights was not in the child's best interests. Respondent completed an evaluation at the Clinic for Child Study which the referee, and the trial court by adoption of the referee's recommendation, agreed presented a "bleak outlook" for successful reunification. Nevertheless, the referee and the trial court found that termination of respondent's parental rights was not in the child's best interests because respondent was a relatively young mother and a bond existed between respondent and the child.

¹ "Clinic" refers to the psychologist's report regarding respondent's evaluation at the Clinic for Child Study. The report was admitted as an exhibit during the hearing.

Contrary to the findings of the referee and the trial court, we conclude that respondent's evaluation, along with the other testimony and evidence admitted during her plea and disposition hearing, demonstrates that termination of her parental rights is in the best interests of the child. First, the report from the clinic psychologist indicates that respondent continued to deny any responsibility for her children becoming court wards. Second, respondent lacked "insight into her contribution to her difficulties," which indicated that she was unlikely to benefit from services or make any significant changes. Third, respondent did in fact fail to complete or benefit from reunification services offered when two older children were court wards. Fourth, respondent failed to recognize that she had a substance abuse problem. Respondent testified that she never used any illicit drugs despite having admitted at the plea proceeding that she used marijuana in the past. She also had a limited understanding of why she was in counseling even though her persistent use of drugs and alcohol was a factor in the decision to terminate her parental rights to J.J. Fifth, respondent admitted that she lacked suitable housing. In addition, evidence that she believed that she kept her mother's home "spotless" even though its condition was enough to warrant a call to Adult Protective Services called into question her "ability to effectively determine appropriate environments for herself or her children." Sixth, respondent appeared to lack a source of income with which to support the child.

In summary, the evidence presented during the hearing demonstrated that respondent's circumstances were virtually unchanged since her parental rights to J.J. were terminated. While the referee's finding that a bond existed between respondent and the child is supported by a letter introduced into evidence, the existence of a parent-child bond was outweighed by other evidence in the record showing that termination of respondent's parental rights was in the child's best interests. Accordingly, we are left with a definite and firm conviction that the trial court committed a mistake in finding that termination of respondent's parental rights was not in the child's best interests. A preponderance of the evidence clearly established that termination of respondent's parental rights was in the child's best interests.

Reversed and remanded for entry of an order terminating respondent's parental rights to the child. We do not retain jurisdiction.

/s/ Donald S. Owens

/s/ Kathleen Jansen

/s/ Joel P. Hoekstra